PUNJAB & HARYANA HIGH COURT

3 Cases

A.U-91

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision: September 21 ,2006

(1)C.W.P.No.8263 of 1987

Sh.Joginder Paul v. The Commissioner of Income-tax Central, Ludhiana and another

(2)C.W.P.No.8264 of 1987

Smt.Kartar Kaur v. The Commissioner of Income-tax Central, Ludhiana and another

(3)C.W.P.No.8265 of 1987

Sh.Subhash Chander v. The Commissioner of Income-tax Central, Ludhana and another

Present: None for the petitioners.
Dr.N.L.Sharda, Advocate for the respondents.

CORAM:

Hon'ble Mr. Justice Rajesh Bindal

1. Whether Reporters of local papers maybe allowed to see the judgment ?

2. To be referred to the Reporters or not ?

3. Whether the judgment should be reported in the Digest?

Rajesh Bindal, J.

This is a bunch of three writ petitions, involving common questions of fact and law. Accordingly, the same are being disposed of by a common order. For the sake of reference, the facts have been taken from C.W.P.No. 8263 of 1987.

The petitioner in the present case filed his return of income for the assessment year 1979-80, on 26.3.1981, declaring his taxable income at Rs. 25,560/-. The return filed by the petitioner was processed under Section 143(1) of the Income-tax Act, 1961 (for short, 'the Act') on 30.2.1982 at a total income of Rs. 43,790/- and accordingly, an additional demand of Rs. 16,707/- was raised against the petitioner after adjusting the amount of advance tax already paid by the

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petitioner. On receipt of the order, passed under Section 143(1) of the Act, the petitioner objected to the same by filing an application under Section 143(2)(a) of the Act on 29.4.1982 within the statutory period of one month prescribed therein. Thereafter, assessment having not been framed under Section 143(3) of the Act, the petitioner approached this Court by way of present writ petition seeking refund of the amount of advance tax paid by him and also for restraining the respondents from proceeding for recovery of any additional tax or penalty for the assessment year in question.

In reply, the stand of the respondents is that the objections filed by the petitioner in Form 6-A, in terms of Section 143(2)(a) of the Act, were considered and rejected by the Assessing Officer vide communication dated 2.5.1986. Accordingly, the petitioner is not entitled to any refund or the relief prayed for.

No one has appeared on behalf of the petitioners. Dr.N.L.Sharda, Advocate has been heard on behalf of the respondents.

The relevant provisions of the Act, as prevalent at the relevant time, are as under:

> "**Assessment**
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> 143(1)(a) Where a return has been made under section 139, the Income-tax Officer may, without requiring the presence of the assessee or the production by him of any evidence in support of the return, make an assessment of the total income or loss of the assessee after making such adjustments to the income or loss declared in the return as are required to be made under clause (b), with reference to the return and the accounts and documents, if any, accompanying it, and for the purposes of the adjustments referred to in sub-clause (iv) of clause (b), also with reference to the record of the assessments, if any, of past years, and determine the sum payable by the assessee or refundable to him on the basis of such assessment.
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> xx xx xx
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> (2)Where a return has been made under section 139, and -
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> (a) an assessment having been made under sub-section (1), the

assessee makes within one month from the date of service of the notice of demand issued in consequence of such assessment, an application to the Income-tax Officer objecting to the assessment, or

(b) whether or not an assessment has been made under sub-section (1), the Income-tax Officer considers it necessary or expedient to verify the correctness and completeness of the return by requiring the presence of the assessee or the production of evidence in this behalf,

the Income-tax Officer shall serve on the assessee a notice requiring him, on a date to be therein specified, either to attend at the Income-tax Officer's office or to produce, or to cause to be there produced, any evidence on which the assessee may rely in support of the return;

Provided that, in a case, where an assessment has been made under sub-section (1), the notice under this sub-section [except where such notice is in pursuance of an application by the assessee under clause (a)] shall not be issued by the Income-tax Officer unless the previous approval of the Inspecting Assistant Commissioner has been obtained to the issue of such notice:

Provided further that in a case where the assessment made under sub-section (1) is objected to by the assessee by an application under clause (a), the assessee shall not be deemed to be in default in respect of the whole or any part of the amount of the tax demanded in pursuance of the assessment under that sub-section, which is disputed by the assessee, in so far as such amount does not relate to any adjustment referred to in sub-clause (i) of clause (b) of sub-section (1), and further no interest shall be chargeable under sub-section (2) of Section 220 in respect of such disputed amount.

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Time limit for completion of assessments and reassessments.

153.(1) No order of assessment shall be made under section 143 or section 144 at any time after -

(a) the expiry of -

(i) four years from the end of the assessment year in which the income was first assessable, where such assessment year is an assessment year commencing on or before the Ist day of April, 1967;

(ii)three years from the end of the assessment year in which the

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income was first assessable, where such assessment year is the assessment year commencing on the Ist day of April, 1968;

(iii)two years from the end of the assessment year in which the income was first assessable, where such assessment year is an assessment year commencing on or after the Ist day of April, 1969; or"

A perusal of Section 143(2)(a) of the Act shows that where an assessment has been made under Section 143(1) of the Act, an assessee can move an application objecting to the assessment within one month from the date of service of demand notice issued in consequence of the order under Section 143(1) of the Act. Proviso thereto further contemplates that where the order passed under Section 143(1) of the Act has been objected to, the assessee shall not be deemed to be in default in respect of the amount of tax demanded in pursuance of such assessment. Section 143(2) of the Act inter-alia further provides that on receipt of the objections, the Assessing Officer shall serve on the assessee a notice requiring him to appear on the date specified. On hearing the assessee and considering his objections, an order of fresh assessment shall be passed in writing determining the total income or loss. Under Section 153(1)(a)(iii) of the Act, an order of assessment could be passed within two years from the end of the assessment year, i.e., up to 31.3.1982 for the assessment year 1979-80 involved in the present case.

The assessment order having not been passed within the stipulated time, as provided under Section 153(1)(a)(iiii) of the Act, there is no justification with the respondents to enforce the demand created in the order passed under Section 143(1) of the Act as the demand raised on the basis thereof itself could not be given effect to in terms of proviso to Section 143(2) of the Act.

As far as the plea raised by the respondents in the written statement to the effect that communication of rejection of the objections by the respondents vide letter dated 2.5.1986 was sufficient compliance of the provisions of the Act and thereafter the respondents were at liberty to enforce the demand is totally

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misconceived and does not fit in the scheme of the Act. Firstly, after the objections were raised by the petitioner, the same were to be dealt with, either by accepting or rejecting at the time of framing the assessment, and whatever was to be done, the same was to be completed within two years from the end of the assessment year in terms of Section 153(1)(a)(iii) of the Act. The same having not been done, the bar created under proviso to Section 143(2) of the Act continues and the recovery cannot be enforced against the petitioner. Even otherwise, the type of communication sought to be relied upon by the respondents cannot, in any manner, be termed to be an assessment order.

As far as the prayer of the petitioner for refund of the advance tax paid by him is concerned, the same cannot be granted in terms of binding precedent, as laid down by Hon'ble the Supreme Court in Commissioner of Income-Tax v. Shelly Products and another, (2003) 261 I.T.R. 367, wherein it was held as under:

> "Failure or inability to frame another assessment after the earlier assessment is set aside or nullified in appropriate proceedings does not entitle the assessee to claim refund of advance tax and tax paid on self-assessment, because to that extent the assessee has admitted his liability to pay tax in accordance with the law. If the assessing authority, on an earlier assessment made being set aside or nullified in appropriate proceedings, cannot make a fresh assessment, it amounts to deemed acceptance of the return of income furnished by the assessee. In such a case the assessing authority is denuded of its authority to verify the correctness and completeness of the return, which authority it has while framing a regular assessment. The assessing authority must accept the return as furnished and cannot in any event raise a demand for payment of further taxes. Accepting the income as disclosed in the return furnished by the assessee, it must refund to the assessee any tax paid by the assessee in excess of the liability incurred by him on the basis of the income disclosed. Even if the tax paid is found to be less than that payable, no further demand can be made for recovery of the balance since the fresh assessment is barred. Any retention of the balance may offend article 265."

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For the reasons stated above, the writ petitions are partly allowed, while holding that the respondents are not entitled to enforce the demand as raised in the order passed under Section 143(1) of the Act, whereas on the other hand, the petitioners shall not be entitled to refund of the advance tax or self-tax assessed, paid by them.

The writ petitions are disposed of in the manner indicated above.

(Rajesh Bindal)
Judge

September 21, 2006
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